

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Mills	Team: Squad #16	CCRB Case #: 201404245	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/01/2014 1:45 PM	Location of Incident: § 87(2)(b)	Precinct: 83	18 Mo. SOL 11/1/2015	EO SOL 11/1/2015	
Date/Time CV Reported Thu, 05/01/2014 7:56 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 05/01/2014 7:56 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM James Wunderlich	01502	907602	083 PCT
2. POF Terry Nicholson	28208	921628	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Terry Nicholson	Abuse: PO Terry Nicholson entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.POM James Wunderlich	Abuse: PO James Wunderlich entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.POF Terry Nicholson	Abuse: PO Terry Nicholson questioned § 87(2)(b)	§ 87(2)(b)
D.POM James Wunderlich	Abuse: PO James Wunderlich questioned § 87(2)(b)	§ 87(2)(b)
E.POF Terry Nicholson	Abuse: PO Terry Nicholson stopped § 87(2)(b)	§ 87(2)(b)
F.POM James Wunderlich	Abuse: PO James Wunderlich stopped § 87(2)(b)	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint via the CCRB online website on May 1, 2014.

On May 1, 2014, at approximately 1:45 p.m. PO James Wunderlich and PO Terry Nicholson of the 83rd Precinct stopped § 87(2)(b) inside § 87(2)(b) in Brooklyn. The following allegations resulted from this incident:

Allegation A – Abuse of Authority: PO Terry Nicholson entered and searched § 87(2)(b) in Brooklyn.

Allegation B – Abuse of Authority: PO James Wunderlich entered and searched § 87(2)(b) in Brooklyn.

Allegation C – Abuse of Authority: PO Terry Nicholson questioned § 87(2)(b)

Allegation D- Abuse of Authority: PO James Wunderlich questioned § 87(2)(b)

Allegation E – Abuse of Authority: PO Terry Nicholson stopped § 87(2)(b)

Allegation F – Abuse of Authority: PO James Wunderlich stopped § 87(2)(b)

§ 87(2)(g)

Mediation was offered to § 87(2)(b) as an alternative to resolve her complaint but she declined to pursue it.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) *is a 5'8" tall, 150 pound, white woman with brown hair and green eyes.* § 87(2)(b). She was § 87(2)(b) at the time of the incident.

CCRB Statement

§ 87(2)(b) provided a statement at the CCRB on June 3, 2014. (Encl. 7a-7d) The following is a summary of her statement.

§ 87(2)(b) often sunbathes on her apartment building roof on weekends, and has permission from the building manager to do so. On Thursday, she had been sun tanning on her roof after work for approximately ten minutes, when the door to the roof opened and two police officers, identified via investigation as PO James Wunderlich and PO Terry Nicholson of Police Service Area 1, walked onto her roof. She was surprised, because it meant the police officers had gotten in through the front door, which was usually locked. She was reading "Self Magazine," drinking lemonade, and wearing her bathing suit. She was not disturbing anyone.

§ 87(2)(b) asked what the officers were doing there and they responded by asking what she was doing there. She pointed out that she was lying on her roof. They asked if she owned the building. She said she did not, but she lived there and had permission to be there. They said she was trespassing and she pointed out again that she was in her building and had permission from her landlord to be there. They told her it did not matter and that she was trespassing and did not have permission to be there.

§ 87(2)(b) initially said ok, but then asked how the officers had gotten into her building. They said they'd found the door unlocked. She asked why they came in. They said the building

was a trouble building. § 87(2)(b) assumed they were referring to a man on the first floor who frequently smoked marijuana.

Then the officers told her she needed to go downstairs and show them identification to prove that she actually lived in the building. § 87(2)(b) did not intend to argue, but then PO Nicholson told her, two times, that she should not be there because she could get raped or pushed off the building. § 87(2)(b) asked if anything had happened, pointing out that that was a very extreme statement to make. PO Nicholson responded that nothing had happened, and that § 87(2)(b) just needed to go downstairs to her apartment. § 87(2)(b) went to her apartment, entering from the back. The officers said they wanted to come into her apartment, but she said that they had to meet her at the front door.

§ 87(2)(b) retrieved her identification from her purse in her apartment, opened the door, and showed it to the officers. She again asked why the officers were there. They said they had smelled marijuana on the street. § 87(2)(b) knew there was a man on the first floor that smoked marijuana, and told the officers that he had nothing to do with her and that the smell did not reach up that high. The officers then left.

Following the incident, § 87(2)(b) spoke to her landlord, who stated that the officers should not have been there and asked her to let him know if officers came there again.

Witness Statement

Witness: § 87(2)(b)

On December 18, 2014, the undersigned investigator called § 87(2)(b)'s landlord, § 87(2)(b) who stated that the building was enrolled in the Trespass Affidavit Program at the time of the incident, though it is no longer enrolled. He stated that for insurance reasons, he does not allow anyone onto the roof, but he had never specifically communicated that to the NYPD and had never been asked.

NYPD Statement:

Subject Officer: PO TERRY NICHOLSON

- *PO Nicholson is a 5'2" tall, 135 pound, black woman with brown hair and brown eyes. She was § 87(2)(b) old at the time of the incident.*
- *PO Nicholson worked from 7:05 a.m. to 3:40 p.m. on May 12, 2014. She was assigned to patrol with her partner, PO Wunderlich. They were in uniform and assigned to an unmarked, black sedan, number § 87(2)(b).*

Memo Book

At 1:47 p.m. a vertical was conducted at § 87(2)(b) and a non-crime was corrected. (Encl. 9a-9c)

CCRB Statement

PO Nicholson provided a statement at the CCRB on November 20, 2014. (Encl. 10a-10b) The following is a summary of her statement.

PO Nicholson and her partner, PO Wunderlich, were on patrol. She thought that she had a list of apartment buildings that were enrolled in the FTAP program, which she described as a program that allowed landlords to deputize police officers to enforce regulations in their buildings. Though she was not certain, she thought that § 87(2)(b) was enrolled in the program, and that was why she and her partner decided to conduct a vertical there. She was

not certain, but she believed that they gained entry to the building through the front door, which was unlocked.

They went up the stairs and onto the roof, where they saw § 87(2)(b) who was sunbathing on her roof in a bikini. PO Nicholson commented on the bikini several times throughout her interview. PO Nicholson believed that by wearing a bikini, § 87(2)(b) was putting herself in a situation where she could be sexually assaulted. The officers approached and told § 87(2)(b) that she was “not allowed to be on the roof because that is not where she resides because she resides in her apartment.” She told § 87(2)(b) that any perpetrator could have walked up the stairs to the roof and pulled a gun on her and sexually assaulted her or used a knife to hurt her.

PO Nicholson added that the officers were trying to help her for her safety, because § 87(2)(b) was not supposed to be on her roof because “that is not where she resides, she resides in her apartment” and “it’s illegal for her to be on the roof because that’s not where you live.” § 87(2)(b) did not raise her voice, but seemed as though she was a little upset. She explained that she had permission from her landlord to be there. The officers responded that unless her landlord was present to tell them that § 87(2)(b) was allowed there, § 87(2)(b) had to leave. § 87(2)(b) left, and the officers followed her to her apartment. Though PO Nicholson stated that she could not recall whether the officers requested § 87(2)(b)’s identification, she stated that she recalled that after § 87(2)(b) open her door, they continued downstairs without any further interaction with her.

PO Nicholson did not think that there were any signs prohibiting § 87(2)(b)’s presence on the roof, and she did not recall smelling or discussing marijuana. The interaction lasted somewhere between three to five minutes.

Other Evidence

On December 5, 2014, the undersigned investigator went to § 87(2)(b) in Brooklyn and photographed two signs that had been printed in black and white on standard printer paper and taped to the doorway. The signs state that the building is patrolled by the NYPD. There were no visible signs in the lobby or near the doorway to the building indicating that roof access was restricted. The investigator was also able to photograph the roof from another location. It appeared to be accessed via a stairway and fire-escape, and appeared to be in frequent use, but there was no indication of whether tenants were allowed on the roof. (Encl. 3a-3c)

The investigation obtained a list of buildings enrolled in the Trespass Affidavit Program at the time of the investigation, but § 87(2)(b)’s building did not appear there. Attempts to obtain a copy of the original trespass affidavit from the Early Complaint Assessment Bureau were made by ADEDI Krist, with negative results.

PO Wunderlich’s Status

The investigation received confirmation from the 83rd Precinct that PO Wunderlich retired from the NYPD and began his terminal leave on August 28, 2014. (Encl. 18m)

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of December 23, 2014. (Encl. 15)

Civilian’s CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (Encl. 2c)

Subject Officer's CCRB History

- PO Nicholson has been a member of the service for sixteen years and there are no substantiated CCRB allegations against her. (Encl. 2a)
- PO Wunderlich has no substantiated CCRB allegations against him. (Encl. 2b)

Event Summary

The Event Summary and Event Information indicate that at 1:54 p.m., officers conducted a vertical at § 87(2)(b). The event was closed as a non-crime corrected. (Encl. 13a-13c)

Conclusion

Identification of Subject Officers

PO Nicholson confirmed her involvement in the incident.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Terry Nicholson entered and searched § 87(2)(b) in Brooklyn.

Allegation B – Abuse of Authority: PO James Wunderlich entered and searched § 87(2)(b) in Brooklyn.

Allegation C – Abuse of Authority: PO Terry Nicholson questioned § 87(2)(b)

Allegation D- Abuse of Authority: PO James Wunderlich questioned § 87(2)(b)

Allegation E – Abuse of Authority: PO Terry Nicholson stopped § 87(2)(b)

Allegation F – Abuse of Authority: PO James Wunderlich stopped § 87(2)(b)

It is undisputed that PO Nicholson and PO Wunderlich entered § 87(2)(b) in Brooklyn, a multi-apartment dwelling, where they conducted a vertical patrol and ultimately approached § 87(2)(b) while she was sunbathing in a bikini on her roof. It is undisputed that PO Nicholson told her that she was tempting rapists by doing so and might get pushed off the roof, and that they then forced her to return to her apartment. § 87(2)(g)

§ 87(2)(b) stated that PO Nicholson forced her to return to her apartment to provide identification. PO Nicholson stated that she did not recall whether she requested § 87(2)(b)'s identification, though she thought that she continued down the stairs after § 87(2)(b) entered her apartment. PO Nicholson added that she stopped § 87(2)(b) because she was “not where she resides, she resides in her apartment” and “it’s illegal for her to be on the roof because that’s not where you live.” § 87(2)(g)

It is undisputed that there were no posted signs prohibiting her from being on the roof, and that her landlord had not specifically informed the NYPD that no one was allowed on the roof. § 87(2)(g)

The officers alleges that it was an FTAP location, and the landlord, § 87(2)(b) indicated that although the building was not part of the FTAP at the time that the CCRB contacted him, the building was enrolled in the program at the time of the incident.

PO Nicholson stated that she believed she entered the building because the address was on a list of buildings enrolled in the trespass affidavit program. The investigation visited the location and determined that while the stretch of rooftops appeared to be in frequent use by residents due to items on the roof, and was accessed via a staircase and fire escape directly to the roof, there were no indications of whether the residents were allowed on the roof. § 87(2)(g)

